

PADCO, Inc.

Planning & Development Collaborative International, Inc.

Housing Finance and Municipal Advisory Program for Poland

FINAL REPORT

**DRAFT DISCLOSURE GUIDELINES
FOR GMINA AND GMINA-ENTERPRISE BONDS**

November 1995

Prepared for:

United States Agency for International Development

Prepared under:

USAID Contract No. EUR-0034-C-00-4029-00, RFS-23A

PADCO, Inc.
1012 N Street, N.W.
Washington, DC 20001

Research Triangle Institute
P.O.Box 12194
Research Triangle Park, NC 27709

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**Prepared
by
John Petersen and Wiesław Oleś**

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A. INTRODUCTION

The following proposals for disclosure requirements for gmina securities were prepared on the basis the Ordinance of the Council of Ministers of October 11, 1994 on detailed conditions an issue prospectus and offering memorandum should fulfil (*Dziennik Ustaw* [Journal of Laws] No. 128 item 631). For that reason the "proposals" were designed within a structure defined by that Ordinance, with references made do its subsequent paragraphs. Preparation of proposals for the issue prospectus is essential inasmuch as in the next stage it will allow to design provisions for the offering memorandum and the current and periodic reports of gminas whose bonds were admitted to public trading

The purpose of the document was to adapt the rules which define disclosure requirements associated with public trading of securities of commercial law companies to the specific character of gmina finances and debt obligations. Therefore, the basic assumption in designing the "Guidelines" was adoption of a structure which allows potential investors to make assessments of gmina's financial situation. We have also assumed that gminas would primarily issue bonds.

Disclosure requirements associated with the introduction of debt securities on the public market should differ from those used in the case of equity. An investor who buys bonds does not buy an ownership share of the issuer's enterprise but only a promise of return of borrowed money and additional rights from the borrower. Thus, when designing rules for defining disclosure requirements for bond issuers one should concentrate on data which will testify to the possibilities of debt payment; less essential is the value of the issuer's total property or even particular economic events related with its activity.

Among the issuers of debt securities, gminas are characterized by some unique features, comparable only to the features of the State Treasury, albeit on a lesser scale. What

matters most is the operation of the budget, as the basis for conducting required activity and the stability of revenues, which primarily hinge on tax revenues. Such considerations mean that gminas should, in principle, represent credible issuers of securities.

Many of the recommendations covered by these "proposals" are currently applied in the United States. The proposals primarily focus on the disclosure requirements for the debt obligations of gminas. However, they can or even should be used in preparing the issue prospectus or the offering memorandum of other municipal legal persons, such as for instance inter-gmina unions as well as in preparing issue documents of gmina-owned companies which render municipal services. However, such companies would be obligated to observe the rules and regulations applicable for other commercial law companies which are not related with the municipal finances.

The "proposals" do not contain separate recommendations concerning the offering memorandum due to the fact that the provisions for creating a memorandum can be directly derived from rules relating to the issue prospectus. In general, to construct a set of requirements for the memorandum it suffices to confine to the proposals concerning the prospectus. Naturally, the provisions for the memorandum would be prepared in the next stage.

The proposals consist of two separate sections; (1) the Draft Ordinance of the Council of Ministers on the content of an issue prospectus and offering memorandum; and (2) a Commentary, which includes a discussion and justification of the submitted proposals.

B. THE PROPOSALS OF CHANGES IN THE ORDINANCE

The proposals of changes in the Ordinance are presented below by indicating the desired content of the issue prospectus. Therefore, they are probably more extensive than would be entered in the new Ordinance.

Title Page

/Paragraph 6 of the Ordinance/

1. Legend: Issue Prospectus or Offering Memorandum.
2. Name and location of issuer, broker and underwriter.
3. Name of issue (Brief description of type of issue and nature of security).
4. Total value of securities offered.
5. Dates of obligations payment and dates of interest payment.
6. Indication of any additional rights obligations associated with securities issued and maturity dates.
7. Denomination(s) of offering.
8. Identification of anticipated redemption dates of debt securities.
9. Identification of place and manner of payment of obligations attached to securities issued.
10. Indication of any restrictions in trading in securities issued.
11. Indication whether the issue is secured and to what extent, with indication of the type of security.
12. Identification of the representative bank.
13. Statement of Securities Commission regarding admission to trading.
14. Date and place of preparation of the issue prospectus/offering memorandum

Table of Contents:

The Table of Contents of the prospectus should be placed immediately following or at the back of the title page.

Introduction

/Paragraph 8 of the Ordinance/

The following information is included in the Introduction:

1. Name and address of issuer;
2. Name and address of underwriter that offers the securities on public market;
3. Name and location of the broker
4. Description of possible relationships between these entities, i.e. relationships between the issuer and the broker/underwriter;
5. The name, address and telecommunication numbers of the representative bank;
6. The name and address of the cognizant auditor;
7. Brief description of the offered securities (the type and number of securities, the value and issue price of the securities, restrictions in transferring any rights from securities issued);
8. The date and place of preparation of the prospectus, and the effective date of the prospectus;
9. Indication of the entity or persons which prepared the prospectus; description of their relationships with the issuer;
10. Identification of places where the prospectus will be available;
11. Indication of nation-wide dailies where information on the issue, further called an "abridged prospectus", will be published;
12. Indication of the method of publishing changes in the prospectus;
13. Identification of persons responsible for the information included in the prospectus in conformance with the regulations defined in Paragraph 8, item 1, point 12) of the Ordinance;
14. Statements by the following parties:
 - a) those who represent the issuer and the underwriter that the information contained in the prospectus is true, reliable and complete;
 - b) those preparing the prospectus that it was prepared in a professional manner and that the information contained in the prospectus is true, reliable and complete in conformance with applicable legal regulations;
 - c) an auditor, that the issuer's financial reports included in the issue prospectus were audited in conformance with applicable standard and rules and that, on the basis of

such audit, he expressed an opinion which is included in the content of the prospectus. If the opinion is negative or it contains objections, then such opinion or the objections should be included in full;

- d) those offering the securities into public trading, that he showed due professional care in preparing and introducing securities into public trading;
- e) those who represent the representative bank, that the information contained in the issue prospectus or the offering memorandum pertaining to the representative, its relationships with the issuer and the rights and duties resulting from an agreement or law are truthful, and that there are no circumstances which exclude the performance of the bank as a statutory representative of bondholders referred to in Article 31 item 2 of the Bond Law.

15. Statement by the issuer or the underwriter on the intention to enter into secondary market trading.

Chapter 1
Description of Securities Issue Offered
/Paragraph 9 of the Ordinance/

The following general information will be included in this section of the prospectus:

1. Amplification of information on the securities issue being offered including information on:
 - 1) the type, amount, value and price of the issued securities and the total issue value;
 - 2) specification of additional bond rights;
 - * if such right is to consist in exchange of bonds for shares in a gmina-owned commercial law company or it is otherwise related with such company¹, define the company and its location, the registration court, the tax identification number, the composition of the executive bodies, principal shareholders and by providing basic information on such company, on its activity, equities, financial performance for the past business year. Indicate how bonds are to be exchanged for such company's shares, and quote the legal foundations from which the right would arise to hold or buy shares by using debt from bonds issued, which is vested in the exchange for bonds;
 - * if another type of non-cash right is related with the issued securities, characterize in detail what it is to consist in, also indicate the legal foundations for its implementation, and provide the terms of the right and its money value;

¹ A gmina cannot issue convertible bonds or priority bonds within the meaning of Article 4, item 4, point 2) and point 3) of the Bond Law. However, this does not preclude the possibility of instituting additional rights associated with the bonds issued which consist in ensuring bondholders a possibility of buying the issuer-owned shares held in a joint stock company with a possibility of payment for such shares by way of deducting debts from bonds. Article 4, item 4 of the said Law mentions non-pecuniary rights only as an example. In each such case, an issue prospectus should contain data on the company with which additional rights are associated.

- * if a right to reliefs and reductions in charges and performances by the inhabitants for the issuer is related with the gmina-issued securities, indicate what charges these are, what are the legal foundations for applying reliefs or reductions, and how can the reliefs be used.

- 3) the stance of the Antimonopolistic Office on additional rights related with the issue;
- 4) discussion on the costs of issue².

2. Information on the securities established for debts from the issue, which includes an identification of:

- 1) the type of security,
- 2) the value and coverage of the security - with indication whether the security covers the entire issue or only part of it,
- 3) the manner of security implementation,
- 4) specific terms of security, however:

- * when a mortgage is instituted as security, characterize the subject of security, provide its value assessed by experts from the Voivode's list, cite a statement on creation of mortgage,³ indicate if there has been a mortgage registration, also indicate the possible priority in satisfying claims from the subject security that other entities are entitled to, indicate whether the mortgaged facility is insured, define the possibilities of restricting or withdrawing such security as well as the possibilities of satisfying claims from the subject of security before the holders of the securities issues.

- * when a pledge on movables is established as security, define the subject of security, state its

² Costs of a gmina bond issue will always be regarded as gmina budgetary expenditures and, therefore, cannot be accounted for separately from bond sales revenues.

³ A declaration of will of the property owner suffices to create a mortgage as security of debt from the bond issue - Article 7 item 1 of the Bond Law. Thus it is not required to make an entry in the Mortgage Register.

- value as assessed by certified experts included on the Voivode's list, describe in detail the conditions of the pledge, with indication to whom is the subject of pledge given into possession, and under what circumstances can the bondholders claim transfer of possession of the subject of pledge and its deposit in court; define the possibilities of limitation or withdrawal of such security as well as the possibilities to others satisfying claims before the holders of the securities issued;
- * when a pledge on rights is established as security, characterize the right which is the subject of security, also state its value and the rules the issuer will follow when establishing this value, describe the principles of exercising rights and any possible restrictions in this respect, if the right results from the civil law contract quote the basic provisions of this contract and indicate who and under what principles would exercise the rights vested to the pledgees as well as the place where the documents confirming the right covered by the pledge were deposited; define the possibilities of limitation or withdrawal of such security as well as the possibilities to satisfy the subject of security before the claims of holders of the securities issued;
- * when obligations which result from the issue of securities are secured by the bank guarantee of the National Bank of Poland, a domestic or foreign bank or an international financial institution, characterize the guarantor entity by providing:
- the name of the firm and the location of the bank;
 - the name of the court or any other registration body and the registration numbers;
 - the addresses and telecommunication numbers;
 - the composition of executive and supervisory bodies;
 - the equities;
 - the financial performance for the past

business year.

Furthermore, provide the amount of the guarantee, discuss its conditions, with particular consideration of the possibilities of guarantee cancellation or limitation, and indicate the situation when security would be implemented.

- * when the issue is secured by State guarantees quote the legal regulations governing such guarantees and the decision of the guarantee-giving body;
- * when the issue is secured by gmina enhancement, state the name of the gmina, the seat of the gmina office and its telecommunication numbers, quote the gmina council's resolution on the provided enhancement, indicate the total assets value of the gmina-enhancer, include the consolidated report on the enhancer's budget performance for the past year and the consolidated report on budget performance prepared for the end of the quarter preceding the submitting of the issue prospectus or the offering memorandum, provide information on the gmina-enhancer's debt and whether it is within the limits defined by the Law on Financing Gminas; also describe general terms and conditions of the enhancement-providing contract, by indicating whether the enhancer can cancel or limit an enhancement, and inform on how and when the bondholders can claim payment from the enhancer.

3. Provide the legal foundations for the issue, with indication of:

- 1) the issuer's executive bodies which have passed resolutions that are required to carry out the issue, the date when the resolution was passed and the forms of its passing, with quotation or summary of its content;
- 2) the stance of organizations performing their oversight function over municipal activities on resolutions which lead to an issue;

4. Define the purpose of the issue and the use of the funds acquired from the issue, providing the following data:

- 1) Describe the issuer's preparation for implementation of the purpose indicated;
 - 2) Define the implementation priorities of the purposes if the issuer maintains that the proceeds from the issue would be allocated for the implementation of several purposes;
 - 3) Indicate the sources of acquiring additional funds if such funds are required to implement the project or program;
 - 4) If the proceeds from the issue are to be used to repay existing obligations in an amount exceeding 5% of the proceeds, indicate the purposes of such obligations and their terms. Describe any plan of refunding of existing debt.
5. Describe the sources of funds for payment of obligations from securities issued⁴, in particular containing information on how the person entitled from securities can claim his rights.
6. In the case where so-called revenue bonds are issued (Art. 4, item 4, point 1 of the Bond Law) - describe the following features of sources of revenues which are to serve the payment of bond obligations:
- 1) the type of source of payment and its relationships with the issue.
 - 2) the rules of flow of funds from the funding source to the bondholders - in the case when gmina is the issuer, indicate how the revenues from the source which constitute the budget revenue will be calculated.⁵
 - 3) if a particular property or other asset is to be the

⁴ In the case where a gmina is the issuer, the payment will always be made from the gmina budget. This, of course, is the payment of the principal, redemption of the issued securities would not constitute budget expenditures and would be financed from the budget surplus.

⁵ All gmina revenues make up the budget revenue and it is out of the question to use them outside the budget. Therefore the issue of revenue bonds by the gmina is only possible under a principle that revenues from a particular source will help calculate the benefits for bondholders. No doubt it would be impossible to pay such revenues directly to people entitled to bonds.

source of debt payments, characterize the rules of insurance of such property, its maintenance and administration.

7. Describe the rules of redemption or anticipated repurchase⁶ of the issued debt securities by the issuer, including:
 - 1) indication of the date of redemption
 - 2) indication of the procedures under which redemption would occur
 - 3) indication whether the issuer envisages a possibility of bond repurchase
 - 4) indication of the procedures and dates of repurchase and the method of providing information on the repurchase.
8. Define the interest calculation conventions and the method of payment of interest:
 - 1) indicate bond interest, and determine the discount;
 - 2) if securities are issued at a variable rate - describe the method of calculating the variable rate;
 - 3) state the frequency and method of payment of interest and principal;
 - 4) define the principles for determining rights to interest, in particular define the date of ownership upon which interest is paid and the procedures which lead to receiving interest.
9. The principles of tax treatments of revenues from securities.
10. State whether the gmina envisages new issues or considerable amounts of borrowing during the period of bond maturity and state how the issue now being offered affects fulfilment of limits of gmina indebtedness.
11. Describe the risk factors associated with the offered securities.
12. Define in detail the rules of the public subscription,

⁶ Redemption means fulfilment of the major obligation by the issuer of debt securities while repurchase means purchase of debt securities before maturity by their issuer in order to amortize them - Article 25 item 1 of the Bond Law.

including:

- 1) the forms and places of subscription for bonds
- 2) the rules of paying and the effects of not paying the price
- 3) the methods of subscription
- 4) the subscription time frames
- 5) the terms of issue realization
- 6) the method of informing investors about the issue not being realized
- 7) the dates and method of return of payments made for securities in the case when issues are not realized.

13. Additional information on the representative bank:

- 1) identify the bank and its location, indicate its registration court, cite the bank operation licence and provide full address and telecommunication numbers;
- 2) provide information on the bank's equities;
- 3) describe any relationships between the representative bank and the issuer.

14. Describe the principles of operation of the representative bank, by providing:

- 1) the principles of the trustee contract;
- 2) the duties of the representative bank towards bondholders;
- 3) the duties of the issuer towards the bank;
- 4) the rights the representative bank can exercise towards the issuer;
- 5) the circumstances under which the representative bank is obligated to undertake actions;
- 6) the circumstances under which the representative bank may undertake actions;
- 7) the means and method of changing the representative;
- 8) the mode of communicating between the bank representative and the bondholders;
- 9) the relationships between the activity of the representative bank and the individual activities of the bondholders and the principles of the representative bank's responsibilities towards bondholders in instances of default of duties arising from the law or contract.

15. Inform whether the data contained in the prospectus is subject to changes and under what principles this can be done.

Chapter 2
Information on the Issuer
/Paragraph 10 of the Ordinance/

When the gmina is the issuer, provide the following:

1. Name of the gmina, with an indication whether it is a town gmina, town-rural gmina or rural gmina.
2. Date when the gmina was established; cite the legal act pertaining to its establishment.
3. Information on the area of the gmina and basic demographic information.
4. Information on gmina's bodies with general description of their powers and responsibilities as well as who represents gmina in its external relations.
5. Information on gmina's budgetary entities:
 - 1) indicate the address and telecommunication numbers of the gmina office, its statistical number and tax identification number, if assigned;
 - 2) indicate the types and number of budgetary entities
 - 3) indicate the total number of people employed in the gmina's budgetary entities, with indication of the number of employees who are appointed;
6. Information on the non-budget entities operating in the gmina territory:
 - 1) indicate the number and types of non-budget entities;
 - 2) define the scope of activity of non-budget entities;
 - 3) indicate the total number of employees in gmina's non-budget entities;
 - 4) define the total amount of revenues and the amount of expenditures of gmina's non-budget entities.
7. Information on business activities in the gmina territory:
 - 1) indicate basic sources of income of the gmina inhabitants
 - 2) indicate key businesses operating in the gmina;
 - 3) provide approximate number of working population and the number or an indicator determining the number of job-seeking (unemployed) people.
8. Analysis of organizational relations between the gmina-issuer and other entities:
 - 1) indicate inter-gmina unions of which the issuer is a

- member, with discussion of the principles of their financing, the rules which define the issuer's possible responsibility for the unions' obligations and the gmina's position in the union's executive bodies;
- 2) indicate inter-gmina agreements to which the issuer is a party, and provide an analysis of rights and liabilities;
 - 3) discuss stocks and shares held in companies where the gmina has over 10% of equity capital and over 10% of votes at the General Assembly of Shareholders or at the Assembly of Partners;
 - 4) indicate enterprises for which gmina is the promoter;
9. Indicate essential contractual relationships between the gmina-issuer and the commercial law companies where the gmina is a participant, as well as the enterprises for which it is a promoter, with particular attention paid to contracts pertaining to the performance of public utility services by such entities.⁷
10. Provide a general description of the gmina property including:
- 1) information on the gmina property with an indication to what part of such property consists of:
 - * lands in perpetual usufruct;
 - * real estate making up gmina housing resources;
 - * lands for construction purposes, indicating which of them are readied for sale;
 - * utility buildings for sale, rent or lease;
 - * other property, including municipal facilities which are part of an enterprise or plant which deal with water and heat supply and sewage disposal;
 - 2) general information on the creation of the gmina property.
11. Indicate whether the issuer's securities are or were quoted. Provide the dates of issue of the decision on admission to quotation by entitled bodies.
12. Statement on quotations of own securities on the securities market for the past three years, with indication of at least the mean quotation for each quarter.

⁷ A detailed description of this type of contractual relationships should be included in the chapter of the prospectus devoted to the issuer's activity.

Chapter 3
Information About the Governing Body and Management
/Paragraph 11 of the Ordinance/

I. THE GMINA BOARD

Provide the following information regarding the members of the Gmina Board:

1. Name, address, age, position of members of the board, and date of appointment to the board;
2. Qualifications, previous positions and participation in local government units over the past three years;
3. Employment apart from duties on the board;
4. The scope of duties on the board;
5. The functions performed in gmina-dependent entities, along with information on remuneration and awards received from performance of such functions for the past financial year;
6. Information on the civil law contracts on transfer of rights or liabilities contracted over the past two business years between the gmina and members of its board;
7. Information on pending or terminated penal and disciplinary proceedings and civil proceedings on property issues in which the board members were parties - over the past two years.
8. Information on instances when the gmina council refused to adopt the annual report of the management of which such a person was a member.
9. Information on stocks or shares held by board members as well as by their spouses, children and parents in business entities which over the past three years have rendered services for the gmina.
10. Information on employment or retention of board members, their spouses, children or parents by the representative bank, an entity offering gmina securities for public trading or an underwriter of its securities.

II. THE GMINA COUNCIL

The following information about the gmina council is provided

in the issue prospectus prepared by the gminas:

1. Number of councillors
2. Number of councillors who served on previous councils;
3. Description of major clubs and groups of which the council is composed and their numbers;
4. Indication of clubs and groups supporting the executive board;
5. Information on councillors who are local government employees or are employed by gmina-owned entities;
6. Information on employment or retention of councillors by the representative bank, an entity introducing or offering gmina securities for public trading or are underwriter of gmina securities;
7. Information on the Chairman and Deputy Chairmen of the Council, including:
 - * Name, address, and age of and the date of their election;
 - * Professional qualifications
 - * Previous positions and participation in the authorities of local government units over the past three years;
 - * Information on professional activities.

III. THE GMINA TREASURER

The issue prospectus of the gmina also includes information on the treasurer in the same level of detail as for the board members (above). In lieu of information on the vote of acceptance in the case of the gmina board, provide information on the refusal to provide countersignature by the gmina treasurer and the RIO commission's findings concerning the examination of this case.

IV. THE INTER-GMINA UNIONS

Information requirements provided for gminas are respectively applied in preparation of information on the members of the board and the chief executive bodies, governing bodies and managers of an inter-gmina union.

Chapter 4 **Information on Activity of the Issuer** /Paragraph 12 of the Ordinance/

The following should be provided in this chapter of the prospectus:

1. Describe the principal services provided by the gmina, with division into:
 - 1) own, obligatory services;
 - 2) other own services;
 - 3) mandatory services in the scope of government administration taken over under:
 - * a law (ordered by the law)
 - * an agreement with governmental administration
 - 4) services performed under contract or agreement with other gminas.
2. Discuss the organizational structure for implementing municipal services. Indicate which tasks and services, of what total value and of what share in the gmina's budget are implemented by:
 - 1) the gmina's budgetary entities;
 - 2) the gmina's budgetary enterprises and auxiliary firms;
 - 3) municipal enterprises;
 - 4) commercial law companies where the gmina is the dominant entity;
 - 5) other economic entities.
3. Discuss the issuer's expenditures by major tasks.
4. Discuss the revenues of the gmina budget collected by the gmina, including:
 - 1) describe major sources of revenues, distinguish between:
 - * own revenues and other revenues;
 - * revenues collected by gmina itself and assigned by the state tax administration;
 - 2) define the principles of gmina's tax policy;
 - 3) provide per capita calculation of own revenues from major sources;
 - 4) assess the effectiveness of revenue collection by the gmina, by:
 - * comparing the revenues from taxes planned in the gmina budget in the past year, the amounts resulting from the issued tax decisions and the proceeds actually levied from the given type of taxes.

- * discussing the relationship between the revenue plan and its performance over the past three years;
 - * discussing what part of debts owed to the gmina are paid voluntarily by the obligators, and under what circumstance was the gmina forced to institute proceedings aiming at execution of the outstanding debt;
 - * what is the mean efficiency of gmina's execution activity.
5. Describe the mode and effectiveness of budgetary planning and budget management by:
- 1) discussing the mode and dates of designing the draft budget and of its passing;
 - 2) discussing budget performance, by:
 - * assessing the performance of revenues and expenditures;
 - * explaining cases when there are differences between the plan and performance at the end of the past year or for the half-year in particular sections of expenditures or sources of revenues in excess of 15%;
 - 3) indicating cases of breach of budgetary discipline in gmina budgetary entities over the past two years preceding the publication of the issue prospectus;
 - 4) describing the method of financing budget deficit or appropriation of budget surplus over the past three years.
6. Provide information on the issuer's debt obligations, in particular:
- 1) indicate the total amount of debts from credits, loans and securities with division into long- and short-term debts and provide information on the nominal amount of debts and interest.
 - 2) define the amounts falling due from borrowing and their interest in particular years of maturity of the issued debt security;
 - 3) indicate whether obligations from credits, loans or securities were secured - describe securities;
 - 4) discuss obligations from enhancement provided by the issuer;
 - 5) describe long-term obligations from supplies and

rendered services which will rest with gminas over the maturity period of the securities issued.

7. Discuss the manner of using properties and other gmina-owned facilities by providing general information on the issuer's properties and facilities which are:
 - 1) in perpetual usufruct;
 - 2) in usufruct of budgetary and non-budgetary entities;
 - 3) for hire or lease;
 - 4) for sale.
8. Describe the capital investments planned by the gmina:
 - 1) Describe the gmina's investment needs in the next five years
 - 2) Indicate planned investments, and specify their costs, schedule and source of funding
 - 3) Indicate investments already under construction and the stage of their completion.
 - 4) Discuss the investment tasks concluded over the past three years.
9. When there is an intention to use proceeds of the gmina's securities for a revenue-producing activity on the basis of which special rights attached to bonds would be reckoned, characterize the possibilities of obtaining such revenues.
10. Describe the competence and experience of people managing the issuer's financial activity.

Chapter 5

Evaluation and Forecasts by the Issuer on His Business Activity

/Paragraph 13 of the Ordinance/

The following information is provided in this chapter:

1. Evaluation of the effectiveness of budgetary planning in the gmina and indication of any anticipated variances during implementation of the existing gmina budget; with particular regard to any impact on the ability to meet contracted obligations;
2. Evaluation of the prospects for growth in gmina revenues over the maturity period of the issued securities, including information on:

- 1) the base of particular types of taxes which make up gmina's revenue;
 - 2) the base of charges collected by gmina which make up the budget revenue;
 - 3) the planned revenue structure and potential abilities for revenue increase;
 - 4) evaluation of productivity of major sources of revenue over the maturity period of the issued securities.
3. Evaluation of growth in gmina expenditures over the maturity period of the issued securities.
 4. Evaluation of the possibilities of altering funds allocated to investment activities, indicating which expenditures cannot be subject to reduction, as well as a list of basic investment needs;
 5. Evaluation of the prospects for development of economic activity in the gmina territory;
 6. Evaluation of the financial impacts on the gmina of implemented or planned economic programs;
 7. Discussion on the effectiveness of gmina non-budgetary entities, with consideration of:
 - * possible proceeds to the gmina budget
 - * expenditures in connection with maintenance of such entities.
 8. General evaluation of the effectiveness of municipal companies and enterprises, with an indication of existing or prospective plans for their privatization;
 9. Evaluation of the gmina's demographic situation over the maturity of the securities issue, with assessments of the unemployment level and information on unemployment reduction programs now underway;
 10. Provisions to the budget of the following year, with general justification and indication of basic factors which affect the implementation of the budget in the following year;
 11. Description of the impact of the implementation of the purpose of this issue on the issuer's financial situation.

Chapter 6
The Financial Reports
/Paragraph 14 of the Ordinance/

The following are to be included in the prospectus of the gmina-issuer of securities:

1. Consolidated reports on gmina's budget performance over the three budgetary years preceding the issue, prepared under the regulations of the budget law and in accordance with the sample included in Attachment 1. Provide the opinion of an entity (the RIO) entitled to audit financial reports representing an appraisal of the report's reliability, compatibility with the entries in the issuer's books and the financial reports submitted by its organizational units, and correctness, conformability with the applicable accounting standards.
2. Statement of the gmina's assets and liabilities as of end of the budgetary year preceding the issue (gmina balance) prepared in accordance with the sample included in Attachment 2. Provide an opinion of an entity entitled to audit financial reports containing an appraisal of the report's reliability and correctness. The report should include the assets and liabilities of the non-budgetary units, following the principles appropriate for consolidated (combining) balances, with consolidation for budgetary units.
3. If the gmina is the dominant entity, in the interpretation of the provisions of the Law on Public Trading in Securities and Trust Funds, the aggregate financial reports of the dependent entities, created through consolidation of particular financial reports, with relevant application of the principles defined in Chapter 6 of the Accountancy Law, through such composition as if the gmina-dependent entities formed one entity, to the exclusion of application of the provisions of Art. 56 item 2 and Art. 58 item 3 point 4." The aggregate financial statements are to be prepared as of the last day of the budgetary year preceding the issue. Such

report should contain an opinion prepared by the entity entitled to audit financial reports containing an appraisal of the report's reliability and correctness.

4. If the issue prospectus is submitted after June 30th - the consolidated report on gmina's budget performance as on June 30th, provided with an opinion referred to in point 1 above and the aggregate financial report of gmina-dependent entities, prepared as on June 30th.
5. If, over the past three years preceding the issue, the level of inflation exceeded 20% a year - reports on budget performance, report on assets and liabilities, and financial reports of dependent entities should be adjusted by the inflation index.

Paragraph 15 of the Ordinance is applied to define the sequence of including the specified information.

Chapter 7

Additional Information

/Paragraph 16 of the Ordinance/

The following are included in the chapter "Additional Information" of the issue prospectus prepared by gminas:

1. Quarterly consolidated reports on budget performance prepared from the beginning of the budgetary year (there is no requirement of providing such reports with an opinion of an entity entitled to audit financial reports);
2. Gmina's draft budget for the following budgetary year, if, before submission of the prospectus, the board has already submitted this draft to the gmina council;
3. Additional data which are not included in other sections of the prospectus if they are of significance for the projected issue.

Chapter 8

Attachments

/Paragraph 18 of the Ordinance/

In the case of the issue prospectus prepared by gminas, the chapter "Attachments" includes:

1. The stance of the board of the stock exchange company on the possibility of quoting gmina issued securities on one of the stock markets, if the issuer is introducing its securities on that market.
2. Extract from the Mortgage Register of the property if debts from issue were secured by mortgage.
3. The following RIO opinions:
 - 1) the intent to issue bonds by the gmina, issued after taking cognizance of the issue prospectus;
 - 2) the report on the gmina's budget performance for the year preceding the budget preparation;
 - 3) the report on the course of gmina's budget performance, prepared as on June 30th of the budgetary year if the issue prospectus is submitted after June 30th;
 - 4) the draft budget for the following year if such opinion is delivered to gmina before the day of submitting the prospectus;
4. The agreement between the issuer and the representative bank.
5. The gmina council's resolution on enhancement if debts from issue were secured by other gmina's enhancement.
6. The enhancer's statement.
7. The guarantor's statement if debts from issue were secured by a guarantee of a bank or an international financial institution.
8. The opinion of the Antimonopolistic Office if bonds are to enjoy any incentives.
9. Opinions and valuations by auditors if the issue was secured on pledge or mortgage of property.
10. The issuer's statement on establishing a pledge.

C. COMMENTARY AND JUSTIFICATION

Title Page

/Paragraph 6 of the Ordinance/

The title page should contain basic data about the issue which help the investors in identifying the name and nature of the issue. Attention should be paid to the fact that the issue prospectus or the offering memorandum prepared by gmina in connection with the bond issue would provide useful information for investors over a much longer period of time as compared with the issue of commercial company stocks and shares. These documents would be useful over the entire maturity period of the bonds, because some sections (eg. information about the issue) would not lose their topicality with the passage of time. Thus, according to the authors of this paper, the title page of the bond issue prospectus should differ from the generally accepted cover pages of the stock issue prospectuses. A legend that the cover page is for reference only and the reader should read the entire document is desirable.

Therefore, it would be best to place the Table of Contents on the inside of the title page, with the addresses and telecommunication numbers of entities involved in the issue transaction. This would help investors who collect many issue prospectuses to familiarize themselves with the document.

Introduction

/Paragraph 8 of the Ordinance/

The proposals pertaining to the Introduction are modelled after the current information structure and they provide for placement in the Introduction of the prospectus of basic information about the issue and the entities involved in the issue transaction, with regard to the differences which stem from other legal regulations that refer to bond issue. The Introduction defines key parties taking responsibility for the issue prospectus; it contains their statements [Representations] on taking such responsibility.

Chapter 1
Description of Securities Issue Offered
/Paragraph 9 of the Ordinance/

Commentary

1. pt. 1) - Specification of additional rights associated with the bonds issued.

If such right is to consist in exchange of bonds for shares in a gmina-owned commercial law company or it is otherwise related with such company, to describe such company we recommend to use the requirements envisaged for the issue prospectus of the commercial law company if convertible bonds were to be initially offered for public trading or for the offering memorandum if bonds were only introduced into secondary public trading.

2. Information on the value and types of securities established for obligations resulting from the issue.

In Article 6 item 2 point 1), the Bond Law provides for the possibility of securing debts resulting from the issued bonds by establishing a pledge. According to Section IV of the Civil Code, we distinguish pledge on movables and pledge on rights.

1. Pledge on Movables:

In case of pledge on movables, it follows from Article 307 of the Civil Code that to establish pledge a contract is required between the owner of the movables and the creditor and the subject of pledge is delivered to the creditor or to a third party, agreed upon by the creditor and the debtor. The law envisages two exceptions to this rule:

- * the situation when the subject of pledge is in the possession of the creditor - then the very contract suffices to establish pledge (Article 307, Paragraph 2 of the Civil Code);
- * the banker's registered pledge established to secure credits granted by the bank (Article 308 of the Civil Code).

Naturally, in the case of a bond issue, it would be impossible to deliver the subject of possible pledge to the creditors, i.e. bondholders. Since the banker's registered pledge can only be established as security of the credits granted by the bank, the only method of securing debts resulting from the bond issue through pledge would be to leave the subject of pledge in the possession of the third party, upon which all parties agree. Such consent on the part of the bondholders would take place through an approval of the terms of the issue by way of adopting the proposal of bond purchase, (referred to in Article 9, item 1 point 2 of the Bond Law) or by way of making a bond subscription. It is natural that in such case the subject of pledge would remain in the possession of the representative bank. Adoption of such solution in case of default in bond redemption or in performance of rights resulting from bonds would facilitate possible satisfaction of creditors from the subject of pledge. Obviously, the terms of pledge on movables and the entity to whom the subject of pledge would be delivered should be described in detail in the issue prospectus or the offering memorandum. It should be noted that it univocally follows from Article 323 of the Civil Code that transfer of debts secured by pledge involves transfer of the pledge itself. By no means does the liquidity of issued bonds preclude security by a pledge of debts resulting from the issue.

The terms of the issue should in advance preclude the right, stemming from Article 324 of the Civil Code, of the purchaser of the debt secured by a pledge to demand a delivery of things encumbered by pledge. However, in some cases⁸ the demand to deposit the subject of pledge in court is admissible. At the same time, attention should be paid to the fact that the institution of banker's registered pledge serves best as security of debts resulting from bonds. This, of course, would require changes in the current legislation.

2. Pledge on Rights :

⁸ For instance when such a demand would have been put forward by a large group of bondholders, in case when there is change of the representative bank or in other cases which are specified in detail in the issue prospectus or the offering memorandum.

Pledge on rights might turn out to be a very convenient way of securing debts resulting from gmina-issued bonds. Such pledge can be established on property rights - if they are alienable. Thus the gmina issuer of securities could secure its bonds by a pledge on the right to collect rental, hire or lease charges or charges for some types of municipal services.⁹ Usually, "delivery of things" is not required in case with the pledge on rights,¹⁰ as it would suffice to conclude a contract according to the applicable requirements appropriate for the transfer of rights and a written notice to the debtor by the pledgor (Article 329, Paragraph 2 of the Civil Code). Therefore, if the issuer secures debts resulting from bonds by pledge on rights, the issue prospectus should include information on such notices. In addition, it should be determined who would represent the bondholders' rights towards the pledgor, especially who, on behalf of the pledgee, would perform actions which aim at maintaining the right encumbered by the pledge (Article 330 of the Civil Code). It is most obvious to entrust such rights and at the same time duties with the representative bank.

However, we should also consider the fact that with the issue of bonds placed through a private placement and subsequently put into public trading of securities in conformity with the standard of Article 29 item 2 of the law, a representative bank need not be used. It should also be settled whether performance of rights of the pledgee by the party assigned under the terms of the issue deprives particular bondholders of such opportunity, or whether they can operate independently of each other.

4. Description of the purpose of the issue and the use of proceeds.

⁹ Naturally, it is inadmissible to secure debts from the issue of municipal bonds on the revenues from taxes which constitute the gmina's own revenues and on the right to share taxes from the State, because such rights are inalienable.

¹⁰ An exception would be pledge on rights the transfer of which would require delivery of the document or an endorsement. In such cases, to establish pledge on rights it would be necessary to indicate the party to whom the document would be delivered or endorsed - under analogous principles as with pledge on movables.

This section of the issue prospectus should contain data concerning underwriting expenditures, the costs of services connected with the issue preparations and an indication how such expenditures would be financed and whether appropriate funds were envisaged in the gmina budget for year of the issue transaction.

When furnishing a description of the project or program that will be financed by the proceeds from the issue, the issuer should state whether additional funds are needed to complete the project or program. If so, indicate the sources and uses of funds, inform whether such funds are already available to the gmina or it has made additional efforts to acquire them. It would also be desirable to define the schedule of disbursement of proceeds from the issue and to indicate how the proceeds would be kept before they are disbursed. If the proceeds are to be used to repay existing obligations of the issuer, provide information on the plan of refunding of existing debt adopted by the issuer.

5. Description of the source of funds for payment of obligations from securities issued.

If such source would consist of the budgetary funds indicate how the issuer views collection of appropriate funds that allow repayment. Also describe:

- 1) whether the issuer sees a possibility of threat to repayment of obligations resulting from the issue because of a shortage in the budget of current funds for repayment and what actions would be taken in such situation, in particular what possibilities are foreseen for securing money for debt repayment;
- 2) the forms of claiming rights by the holder of the securities, with particular consideration of the role of the representative bank and its duties in this respect, as defined in Article 35 item 1 point 2) and Article 35 item 2 point 2) and point 3) of the Bond Law. Because the Law does not specify the representative bank's judicial status in the course of a possible trial against the issuer and does not settle the bondholders' position in the case of instituting legal proceedings by the bank, these problems should be explained in the issue prospectus. In particular, the

following should be indicated:

- * whether the representative bank acts on behalf of all bondholders or only on behalf of some of them (eg. those who granted some special powers of attorney to the bank) or whether the representative bank acts on its own behalf or exclusively as the bondholders' proxy;
 - * whether institution of legal proceedings by the bank precludes the possibility of moving for separate actions for payment by individual bondholders - which might follow from Article 199 Paragraph 1 point 2) of the Code of Civil Proceedings;
 - * whether the bondholders can act in the same proceedings next to the representative bank and in what capacity - such as co-participants in the litigation or perhaps of intervening third party;
 - * what is the representative bank's responsibility towards the bondholders in case of neglect of its obligations specified under the law or the trustee contract, as well as what are the civil law foundations for such responsibility.
 - * specify the method of claiming debts from bonds where no representative bank had been appointed, by indicating the legal proceedings and the cognizant court.
- 3) the method of conducting possible execution against the issuer - i.e. provide the priority of possible satisfaction of claims resulting from the issue under judicial or executive proceedings;
- 4) if the issue is collateralized, indicate the possibilities and procedures which aim at realization of such security, as well as mention whether it is possible for obligations from securities to be settled after obligations of other kind.

7. Description of the rules of redemption or anticipated repurchase of the issued debt securities by the issuer.

Securities introduced into public trading would be redeemed and repurchased by using the structures and procedures of operations of the National Securities Deposit and brokerage companies. Therefore, the description of the redemption or repurchase procedures should include regulations adopted by these institutions. Moreover, if redemption of bonds issued would be a

relatively simple operation and easy to describe, one can imagine a number of possible repurchase solutions, for determining both the number of repurchased bonds and the repurchase price. Provide, for example, a tender organized by the issuer, the principle "he who comes first shall be the best" with a limited repurchase offer, the option for the issuer or the person entitled by the securities.

8. Description of the interest calculation conventions and the method of payment of interest.

If securities are sold at a variable rate, indicate:

- * the method of calculating the variable rate;
- * the circumstance at which changes in the rates usually occurs or may occur;
- * the determination of securities interest;
- * the party determining the new rates and the procedures by which these determinations will be made;
- * the means by which holders will be notified of the changes in rates.

When defining the method of payment of bond interest state, for example, if interest payments are to occur quarterly, semi-annually, if they are to be computed on 360- or 365-day basis, how sums due on non-business days are treated.

10. Description of the risk factors associated with securities offered.

Such description should include both the general and special risks that are associated with a given issue, in particular:

- 1) risk associated with fluctuations in interest rates, lack of market liquidity, the design of the debt instruments;
- 2) political risk and the macroeconomic stability risk;
- 3) risk associated with the specific situation of the issuer, his sources of funding;
- 4) risks associated with the implementation of the project which is to be financed through bonds and the assessment on the effect of failure in this respect on the issuer's solvency.

Chapter 2
Information on the Issuer
/Paragraph 10 of the Ordinance/

Commentary

1. The name of the gmina.

It would be desirable to include in the issue prospectus some general information on the issuer's position in the State structure and to indicate legal foundations for its operation. This requirement would be the more justified if, through adoption of the Law on Towns (Cities), the competencies of particular local government entities become diversified. The same remark would also apply to local government entities above the gmina level.

3. Basic information on the issuer.

This section includes data on the area of the gmina, its population, and villages, districts, housing estates, or towns which are part of it, with indication of the approximate numbers of urban and rural population living in the gmina. It would be advisable to divide the gmina population into basic age-groups (0:7 years old, 7:18, 18:60, over 60).

8. Analysis of organizational relations between the gmina-issuer and other entities.

This section should make a general distinction between budgetary entities, non-budget entities and commercial law companies and municipal enterprises, with indication of the differences between such organizational forms and a description of dissimilarity in the method of funding such entities.

The section devoted to gmina's relations with commercial law companies should include information on:

- * the total value of the issuer's holding of stocks and shares, with indication of ones which can easily be marketed;
- * the number of votes the gmina has at the Assembly of Partners or the Assembly of Shareholders;
- * the gmina's influence on nominations for the executive bodies of companies;
- * the nature of the enterprises's activities.

10. Information on the gmina property.

Most essential from the point of view of the investor is what gmina property can easily be marketed and what are its revenue-making capabilities. Therefore, such information should be particularly highlighted in the issue prospectus.

Justification

In the case with gminas, the Local Government Law of March 8, 1990 (*Dziennik Ustaw* No. 16, item 95 as amended) is the legal ground for gmina operation. According to this law, gminas constitute a totally new form of organization of local government, endowed with legal status and having its own revenues or property. Therefore, it is superfluous to give information on the history of the gmina-issuer and its promoters. Naturally, most Polish gminas exist since the moment of establishment of the first gmina council in 1990. There are exceptions to this rule which are caused by changes in the organization of local governments, i.e. by division of already existing gminas and establishment of new ones. An example of such changes are, above all, gminas which were set up in result of transformations made in 1994 within the Warsaw area. Hence, it suffices to give information on the history of gmina's operation if it were established after 1990. Gminas are established, merged or dissolved by way of the Council of Ministers' Ordinance (Article 4 Sec. 1 of the Law on Local Government) - and therefore the prospectus should also include the legal act under which the gmina-issuer of securities was established.

According to Article 1 of the afore-said Law on Local

Government, the gmina constitutes a local governmental community of inhabitants of a specified local unit (as a matter of fact also called a gmina) provided with the attribute of legal status. Gmina operates through its authorities (council or board) which use the gmina's organizational units. The gmina's issue prospectus should contain basic information on the gmina's executive bodies, especially information on the competencies of particular bodies and the principles of representing gmina on the outside. Most of these issues are regulated by the Local Government Law, whereas some of them are defined by the standards of the charter. It is recommended to describe in the prospectus the basic provisions of the charter which have a bearing on the gmina's external activity.

The gmina office (town office) is the basic organizational unit in the gmina, which services the activity of the Board, Mayor, President, or Village Chief (*wojt*). Therefore, we can identify the office with the gmina - the prospectus should include its seat, telecommunication numbers, tax and statistical identification numbers. The gmina charter provides for its internal structure, including the organizational structure. It is advisable to include a brief analysis of the basic organizational units, other than the office, in the issue prospectus.

The law does not provide for the obligation of court registration of gminas, therefore such information could not be included in the issue prospectus.

Gminas often operate within wider organizational structures, created either by virtue of the law or by way of an agreement. We can mention the following types of organizational and capital unions of gminas.

1. Gminas from the area of one voivodship establish a joint representation in the form of a local government council [*sejmik*] (Article 76 of the Local Government Law). The tasks of the council are specified by the Law and the statutes. The activity of the council is financed from gmina fees. The amount of fees is determined by the council, but they are not considerable amounts for the gmina expenditures. Connections of gminas operating within one council should be considered insignificant from the point of view of disclosure requirements of the issuer of securities.

2. Article 84 of the Local Government Law envisages the possibility of establishing gmina associations. They operate under the principles specified in the Law on Associations. The major gmina associations include: the Association of Polish Cities, the Association of Rural Gminas, and the Union of Metropolitan Cities. Most frequently these associations are set up with the objective of establishing a political representation, while participation in them has practically no effect on the finances of the affiliated gmina, which follows from the fact that membership fees are very low, most frequently paid on a token basis.

3. Article 64 of the Local Government Law envisages the possibility of establishing inter-gmina unions, also called municipal unions. The purpose of their establishment is joint performance of public tasks, eg. maintenance of the water supply system. Such unions are usually established voluntarily by way of passing a resolution by the council of particular gminas, while Article 64 Sec. 4 of the Local Government Law envisages the possibility of imposing an obligation on gminas to establish a union by way of the Law. The inter-gmina union has a legal status and it performs public tasks on its behalf and at its own responsibility. The Chairman of the Council of Ministers is the registration body for the unions. The union derives its revenues both from payments made by particular gminas and from own activity. Detailed principles of gminas' share in costs of the union activity, of covering the union losses, and of profit-sharing are specified in the union's charter, passed by the councils of participant gminas. In view of the above mentioned features of inter-gmina unions, information on gmina's participation in such unions should be included in the prospectus, along with the indication of the scope of financial burdens associated with participation in the union, the method of gmina representation in the union and its position in the union authorities.

4. Developing municipal agreements according to Article 74 of the Local Government Law is a form of joint implementation of public tasks by the gminas. The gist of an agreement is to charge one of the gminas with the performance of public tasks (eg. rendering services in public transport) for the inhabitants of the other gminas as well. The gmina which performs a public task takes

over all related responsibilities, whereas other participants to the agreement are charged with the obligation of bearing part of the costs associated with task performance. Resources, which are transferred by gminas bound up with the agreement, constitute the budgetary revenues of the gmina which performs public tasks (Article 8 of the Law on Gmina Financing of December 10, 1993/ *Dziennik Ustaw* No. 129, item 600, as amended/). Therefore, information on concluded municipal agreements should be included in the issue prospectus.

5. Operations in the form of commercial law companies remain to be the frequently applied means of implementation of public tasks by gminas. Such companies are either the entire property of the gmina or they are established with other entities, especially other gminas. Naturally, information on companies, where gmina is shareholder or partner, should be included in the prospectus, with indication of both participation in the share capital or initial capital as well as with specifying the number of votes the gmina has at the General Assembly of Shareholders or the Meeting of Partners.

6. Finally, the gmina may perform its tasks by using enterprises (which operate on principles defined in the Law on State Enterprises), for which it is a promoter. Information on such enterprises should also be included in the issue prospectus.

The most significant difference in the content of the prospectus between the commercial stock company and the gminas is associated with the fact that a gmina has no equity within the meaning of Paragraph 10 point 8) of the Ordinance. In consequence, it is impossible for gminas to meet the requirements specified in Paragraph 10 point 8) which refer to description of equities.

Here, we should draw our attention to the fact that in the case of a gmina we can speak of gmina property. According to Article 43 of the Local Government Law, a municipal property means "property or other property rights of particular gminas and their associations as well as the property of other municipal legal persons at such enterprises". Acquisition of municipal property takes place in keeping with Article 44 of the afore-said Law

under:

1. the Law (eg. Introductory provisions to the Law on Local Government, which entrusted the gminas with property which earlier assigned to local authorities of the basic-level state admin.);
2. by transferring property to the gmina in connection with the establishment or change in the boundaries of gminas (in such case the appropriate form is to transfer property by way of agreement of concerned parties or, with lack of such agreement, by way of a decision of the Chairman of the Council of Ministers)
3. as an outcome of transferring property by the government administration under the principles specified by the Council of Ministers by way of an ordinance (an example of such property transference was the so-called pilot program under which some of the towns took over additional tasks as their own along with the property which served in their task performance)
4. as an outcome of business activity (it should be noted here that according to Article 9 Sec. 2 of the Local Government Law, a gmina cannot pursue business activity which goes beyond the public tasks)
5. through other legal acts (eg. donations)
6. other cases specified under separate regulations.

We should draw our attention to the fact that the basic means of purchasing municipal property referred to in points 1 through 3 above constitute the so-called "primary purchase" through which the gmina receives the property with no encumbrances and related liabilities. Gmina encumbrance with liabilities which accompany the property is possible only under an explicit provision of the law or the executive act issued under the power of attorney. Such a situation decisively increases the safety of gmina operation and at the same time it leads to a conclusion that liabilities, which stem from the law, assumed with the property and unrepaid at the time of preparation of the prospectus should be precisely described in it. Thus, if it is impossible in the prospectus to describe the issuer gmina's equities in a way which

is appropriate for commercial law companies, then we should allow the possibility of giving a general description of the issuer's municipal property. Such property primarily consists in real estate, other types of fixed assets and intangible and legal values (shares in companies). The binding requirements concerning gmina accountancy prescribe creating a file of such basic elements of property. It should be noted that generally their book value is decidedly lower than the price it would capture in regular trading. Hence, the use of the description of the municipal property in the prospectus should suffice for the appraisal of the gmina-issuer potential. Likewise, brief information on the forms of amassing municipal property will replace data on amassing share capital.

By the same token, it is impossible to include in the prospectus data on the shareholders, contractual connections between the shareholders and the issuer and on the utility shares of the issuer, as such notions do not apply to gminas. However, it is advisable to include information on the issuance of securities by gminas, with defining markets and listings levels in the prospectus.

Chapter 3

Information About the Governing Body and Management

/Paragraph 11 of the Ordinance/

Justification

In Paragraph 11 point 1, the Ordinance as now written defines the basic information needed regarding those performing managerial functions and, in point 3, it requires the same standards for gminas and inter-gmina unions. At present, the Ordinance requires the same information for members of the gmina board and members of the gmina council as is required of members of commercial stock company chief executive bodies. Were that the case, the issue prospectus should provide the following data on such people:

- * Name, address, age, previous positions;
- * Position and qualifications;
- * Employment apart from work at the issuer's enterprise, stating whether it is competitive;
- * Information on contracts on transfer of rights or

liabilities contracted over the past two business years between the gmina and members of its board and councillors;

- * Information on pending or terminated penal and disciplinary proceedings and civil proceedings - over the past five years - on property issues in which the board members or councillors of the gmina-issuer were parties;
- * Information on stocks or shares held in business entities by councillors or board members as well as by their spouses, children and parents, and on their participation in the executive bodies of other entities, finally, on those people's business activity, with an indication whether it is competitive with the gmina activity.

Such a wide scope of information on the gmina council seems to be unnecessary because the gmina council does not resemble the supervisory board of a commercial law company. Rather, it is primarily a representative body, elected in direct, general elections, which provides oversight of general policies rather than direct management. The supervisory function of the gmina council is political and representative in nature. Practically, it is impossible to indicate what qualifications or formal education qualify or predispose people to perform functions at the gmina council. The size of the council of the potential gmina-issuers (between 36 people, for towns with 60,000-80,000 population, and up to 100 people for the largest cities) as a practical matter precludes the possibility of one person exerting great influence on its functioning and makes unnecessary and onerous the collection of individual information. At present, the gmina has no legal means that permit it to collect the current Ordinance-required information from councillors, and an attempt to acquire such information would raise serious objections to the public sale of gmina securities.

The issue prospectus should contain aggregate data on the gmina council that allow the investors to evaluate the stability of the issuer's governance and the level of social confidence in them. Therefore, data on the council's size, the number of councillors serving consecutive terms of office, the councillors'

clubs and political coalitions, and the political support of the board should be regarded as more essential. For example, a lack of gmina council's adequate support for the gmina board might constitute a factor which increases the issue risk.

Finally, it is necessary to provide information on possible relationships between the councillors and the entities involved in the issue transaction - such as the trustee bank, underwriters or a brokerage company that introduces the gmina-issued securities to public trade.

It may also be essential to describe the relationships between the councillors and gmina-dependent entities, as such relationships may influence the policies of the gmina and influence the issue's risk level. A description might be required if councillors are holding high-ranking positions (i.e., directly reporting to the gmina mayor or board) in the local government administration. Such circumstances might influence the local government administration or the council in performing its oversight function over the activity of the gmina's organizational units.

Requirements for disclosure information on those managing the issuer's enterprise should be met with regard to members of the gmina board. In this respect, we propose an added requirement that there be specified the scope of duties of the board members and information about their previous positions in local government authorities. It should be pointed out that when gminas issue securities there is practically no risk regarding members of the gmina engaging in a competitive activity which is crucial to the repayment of the bond issues or the success of gmina enterprise issues. However, the relationships of gmina officials with business entities which render on-going services for the gmina or those that perform services in connection with the issue or the project to be financed may be important because such relationships may increase the risk associated with the issue.

Chapter 4

Information on Activity of the Issuer

Commentary

1. Description of principal services provided by the gmina-issuer.

Information on services performed by the issuer provides, in the case of local government units, a general image of the gmina for investors. Moreover, the scope of gmina's services has direct effect on the amount of the gmina expenditures. However, one should bear in mind that with the passage of time particular local government units start to diversify, primarily in the scope of operation. In this section of the prospectus it is particularly essential to make a distinction between mandatory and discretionary tasks and to indicate whether funds allocated for tasks ordered by the government administration are sufficient. If not, what burdens do the above ordered tasks place on the budget.

2. Discussion on the principles of performing tasks and rendering municipal services.

In this section it is desirable to indicate the method of organizing and funding particular types of municipal services by providing:

- * information on how funds for such services are remitted from the gmina budget;
- * who performs such services;
- * whether the system of rendering such services has been changed over the past few years;
- * assessment of the effectiveness of the operating system of realization of municipal services;
- * whether the services are self-supporting, and which services bring profit and deficit;
- * how does the gmina want to finance possible deficit;
- * indication of most important contracts concluded with the business entities which perform municipal services;
- * information whether the issuer intends to make changes in the system of organization of municipal services and what course would these changes take.

3. Description of the issuer's expenditures for particular tasks.

Here the issuer should include information on the overall structure of budget expenditures as divided into implemented tasks and into sections of budget classification. It is also essential to define the amount of investment expenditures in the gmina budget and to make a division of expenditures into ones which can be subject to reduction and ones which most likely cannot be reduced (with particular consideration of wages of the local government employees).

4. Discussion on the revenues of the gmina budget.

Essential, from the point of view of the investor, would be the revenue structure, with indication of stable and variable revenues. The authors of this paper recommend to make a distinction between revenues which can be influenced by the issuer himself and those which are independent of him. It is also essential whether there are possibilities for increasing gmina taxes or for voluntary taxation of its inhabitants; what are the effects on the budget of applying tax reliefs and exemptions and tax remissions, what are the financial effects of using rates lower than maximum tax rates.

5. Information on the mode of budget planning and performance.

This section of the prospectus should provide information on:

- * who is responsible for preparation of the budget;
- * the process by which budget is debated and adopted;
- * the failure to adopt the budget on time, as specified in the Budget Law;
- * whether the Regional Audit Office has ever declared invalid the issuer's budget in whole or in part or whether the Regional Audit Office has questioned the budget in whole;
- * what is the steadiness of budget performance on the expenditures side and on the revenues side.

6. Information on the issuer's obligations.

In this section of the prospectus the issuer should discuss short-term loans and credits made in the fiscal year immediately preceding the year of the issue, indicating the purpose for which short-term borrowing has been done (in particular by discussing short-term debt that has been used to finance cash deficits, make loans, or to finance investment expenditures). Information should also be included on the terms and conditions of borrowing, terms of payment, plans for financing such debts and the securities established for them.

7. Discussion on the manner of using gmina property and its potential revenue-producing abilities.

This section of the prospectus should include a description on the manner of using gmina property. It is recommended to provide a detailed description of properties which qualify for immediate sale or properties which have utility premises that can bring considerable income. If the gmina property is encumbered or its saleability is restricted for practical or legal reasons, that fact should be noted.

9. Possibilities of obtaining revenues, which are a basis for calculating special rights attached to bonds, by using proceeds from the issue of securities.

In such case, the issue prospectus should:

- 1) describe the nature of the investment financed by bonds;
- 2) explain what services it is to render;
- 3) provide the expected dates of completion of construction works and beginning of operation of the facilities, the issuer's rights with regard to land upon which the investment is to be sited;
- 4) provide overall cost of the project;
- 5) describe the operations to be performed by the facility constructed from proceeds from the issue, including:
 - * describing services to be rendered and the principal users of services;
 - * giving the competitive position of services, with indication whether the gmina enjoys exclusive rights to render such services;
 - * giving the present number of users of the services

and the number anticipated upon completion of the facility or project;

- * indicating the rates or prices to be charged for services, with a description of competitors in providing services;
- * indicating entities responsible for setting rates and prices of the services to be provided and their relationship to the issuer;
- * giving the sources and the availability of any raw materials, energy, supplies or specialized skills needed to perform the service;
- * describing any permits or licenses that need to be obtained prior to operation of the facility to be financed by the securities being offered;
- * comparing projected results of the first year of operation. If such reports and studies exist, reference should be made to relevant engineering, financial feasibility reports or marketing studies when describing the activity financed by the bonds offered. If no engineer or financial feasibility or marketing studies have been done, that fact should also be noted.

10. Description of the competence and experience of people managing the issuer's financial activity.

Information on the organization of gmina financial services, their size, the level of education and experience of people who have key influence on collecting of revenues and administering the issuer's expenditures is desirable.

Chapter 5

Evaluation and Projections of Activity by the Issuer

/Paragraph 13 of the Ordinance/

Commentary

3. Evaluation of growth in gmina expenditures.

For the evaluation of solvency of the gmina-issuer of debt securities it would be essential to know how potential changes, caused by taking up new tasks or by extending the scope of tasks which are already underway, might affect the gmina's financial situation. Such evaluation should also take account of the division into mandatory tasks (i.e. ones that the gmina from its nature has to perform, and where debt obligations can be claimed), including tasks ordered by the government administration, and into other tasks and expenditures. It is important to define the likelihood of a gmina taking up tasks which can aggravate its debt payment capabilities and to indicate what events can bring changes in the level of expenditures which are indispensable for the implementation of tasks which are already underway.

Justification

Basic factors that influence the gmina-issuer's budget and its relationship to the underlying local economy should be examined when discussing the prospects of the gmina-issuer's activity. In particular, it is necessary to identify the characteristics of the basic sources of gmina revenues and to appraise their prospective performance over the maturity of the issued bonds. To make such estimates, it is necessary to analyse the gmina's tax base, to determine its stability and predictability. It is also necessary to characterize municipal services and expenditures and describe the methods of their organization and funding. In particular, this requires the following information on:

- * those municipal services rendered by entities that are directly connected with the gmina budget (eg. budgetary enterprise), or by gmina-companies or enterprises, or by private enterprises, independent of the gmina, that are only related with the gmina by contract;
- * the general principles of financing municipal services

- adopted by the gmina and to what extent are the particular services financed from the general budget;
- * any plans for privatization of gmina enterprises and companies;
 - * the model of financing those companies which render municipal services which was adopted by the gmina, what are the needs (loans, financing investment expenditures, surcharges, initial capital increase, contractual remuneration for services).

It is essential for the appraisal of the gmina's economic prospects to identify the factors which determine economic trends in the gmina territory (in particular, the attraction and retention of business entities, the creation of new jobs, tourism development prospects, transportation, special natural resources and conditions which affect the gmina's economic development). Appraisal of the financial prospects of the issuer also requires knowing how financial management and budget planning are conducted in the gmina.¹¹

The financial situation and the effectiveness of operation of gmina-owned companies and enterprises should also be disclosed. The possibility of acquiring additional income on dividend has an impact on image of the issuer. The gmina's budgetary situation is only in part dependent on those activities financed directly from its own budget. A major part of the local government's tasks can be implemented by the organizational units that are not directly associated with the gmina budget and that are, in part or in whole, self-financing.

In the case of gminas which issue securities, the level of risk associated with the issuer's activity is incomparably lower than in the case of stock or bond issues made by a commercial law company. This follows from the nature of the gmina, which constitutes an element of the State structure, and from the legal character of its basic revenues, since the gmina, primarily

Increasingly common is preparation of a separate investment part of the gmina budget, which allows to make a precise appraisal of the needs and possibilities in this respect. For better financial management it is also recommended to build up the so-called task budget.

financing its activity from taxes, is to a much lesser extent dependent on the market situation, increases of competition, or changes in customer's preferences. Irrespective of the economic trends in particular regions or markets, the gmina collects its due taxes and receives shared taxes from the state. Attention should also be drawn to the fact that sources of gmina revenues - many guaranteed by law - are largely diversified, while their revenue productivity depends on such a variety of sources that practically it is difficult to imagine the weakening of gmina's payment capacity due to some unexpected natural or economic event. It should also be remembered that the gmina practically does not conduct economic activity on its own behalf, thus it is free of risk associated with default or improper fulfilment of economic contracts. Finally, the gmina does not pay income tax from legal persons or taxes on commodities or service. Therefore, in its case, there are no risks associated with errors in tax calculation and payment.

A lowering of a gmina's solvency might rather take place in the case of unplanned expenditures and expenditures which are not covered by current revenues. Thus, a gmina's major risk of failure to pay debt service would be the risk associated with errors in budget planning.¹² This is primarily associated with major, ill-conceived investment activity or by taking up new tasks by gminas. The practice of the past few years shows that in most cases the gminas are forced to finance tasks, taken from the state government administration by way of agreement, from its own funds. It is a rule that gminas credit current expenditures for tasks ordered under the law or entrusted by way of an agreement, as state budget subsidies are most frequently transferred with delay with respect to needs. In this connection, the gmina's financial situation may deteriorate, due to transfer - by way of the law - of new tasks without guaranteeing adequate funds to this end. It should be noted that, as a practical matter, the gmina has no effect on shaping such risk.

Budget planning in Poland is most frequently made by the index method, which involves applying coefficients that reflect the level of inflation in relation to the level of budget expenditures for the past year. This method might lead to underestimation of expenditures which appear for the first time, or whose participation in the budget increases.

Lowering of gmina's capability to repay debts may result from the lowering of the effectiveness of the sources of income. The reasons for such changes are as follows:

- * Changes in the state tax law (for example, the limits on rates of most taxes which make up the gmina's revenues are set centrally, by the Finance Minister; therefore, gminas have restricted effect on their growth)
- * Lowering of the tax base due to economic difficulties in the gmina's territory (eg. increase in the unemployment level due to liquidation of enterprises as major employers, liquidation or moving elsewhere of an enterprise that pays high taxes from legal persons, or environmental charges)
- * decrease in the effectiveness of tax-collection, resulting from a deterioration of the financial situation of the gmina inhabitants.

The above mentioned risk factors are only partially foreseeable, like the possibility of increasing expenditures as a result of natural calamities. Nevertheless, the prospectus should address these possibilities if the issuer is aware of such circumstances.

Chapter 6 **The Financial Reports**

/Paragraph 14 of the Ordinance/

Justification

The Polish system of gmina accounting and financial reporting does not follow the same principles as those used in enterprise accounting and financial reporting. The dissimilarity follows both from the differences in legal regulations and from the specific character of the gmina as a public entity, the financial activity of which is regulated by the standards of the budgetary laws for public units. Therefore, the existing entries in Paragraph 14 of the subject Ordinance are not directly applicable to gminas wishing to issue securities on the public market. It is unclear exactly what gmina's "financial report" means, since gmina generate a variety of such reports. Therefore, a definition of what in the prevailing legal system might be best be considered as a gmina's financial report should be the first step that leads to

defining the requirements for publishing gmina's financial reports in the issue prospectus.

The standards that best help in formulating such definitions are found in three basic legal acts governing local government accounting and financial reporting. These are as follows:

1. the Accountancy Law of September 29, 1994 (Journal of Laws, No. 121 item 2125);
2. the Budget Law of January 5, 1991 (Journal of Laws of 1993, No. 72, item 344 as amended); and
3. the Local Government Law of March 8, 1990 (Journal of Laws, No. 16, item 95 as amended).

Accountancy Law:

The provisions of the Accountancy Law of September 29, 1994 are applicable to gminas, with an exception of the standards included in Chapter 5 ("The Financial Reports of a Unit") and in Chapter 6 ("The Financial Report of a Capital Group"). The consequence of adopting this standard is a lack of statutory obligation for gmina to prepare the balance sheet, the income statement and the consolidated balance sheet for the capital group. The dominant entity in the capital group contained in the interpretation of the Accountancy Law refers only to a joint stock company, a limited liability company or other association of capital. Thus, we cannot state whether the gmina is a dominant entity in relation to the group of commercial law companies where it holds shares or stocks.

A somewhat different definition of the dominant entity is formulated in the Law on Public Trading in Securities and Trust Funds. In this interpretation, the gmina can be the dominant entity in relation to its companies which are dependent entities. It should be noted here, that by making the above exceptions, the legislation (Law on Public Trading) was inconsistent in that it has not excluded application to gminas of the regulations of Chapter 7 of the Law which require auditing and publishing of financial reports. These are required of such organizational units covered by operation of the Law where average annual employment in the preceding year, covered by the report, equalled or exceeded 50 people and, at the same time, assets total of the balance sheet at the end of the business year amounted to or exceeded the

equivalence of ECU 1,000,000. These amounts would surely be exceeded by a large number of gminas and gmina budgetary entities. Doubts would arise whether the Accountancy Law requires to audit and publish the gmina's financial report in a situation when the same act explicitly precludes the obligation of preparing such a report.

It follows from the above circumstances that a balance sheet of reporting entities, prepared according to the sample included in Appendix 1 to the Law, cannot be part of gmina's financial report. Nonetheless, it is clear that most categories defined in the above mentioned balance sheet sample appear in the account structure of the gmina. Thus, with minor modifications, we believe that the gmina could prepare a report-balance according to such a sample. A possibility should be created to describe the liabilities by making new samples. It appears that the principles of valuing the assets and liabilities and determining financial performance, defined in Chapter 4 of the Accountancy Law, are fully applicable to gminas.

Preparation of the balance would require collecting adequate data from gmina budgetary units (budgetary, auxiliary firms and special funds) and to make a specific "consolidation" or "combination" of such data. Preparation of such a "consolidated" or "combined" balance sheet for the gmina would have to be done taking account of the fact that both the obligations and the property of the budgetary units belong directly to the gmina. Such an operation would require a departure from frequent identification of a local government entity with a gmina office. The balance sheet, prepared in such a way, would allow a complete description of the gmina's assets and liabilities. However, one should be aware that due to the specific character of the municipal property and the specialized use of the gmina property, the information contained in the balance sheet would not suffice to make an appraisal of the gmina-issuer's financial standing from a private-sector perspective.

It also follows from the above regulations that the gmina is not now required to prepare income statements. That is because of the nature of the activity the gmina conducts, to which most of the notions appropriate for the income statement do not apply. The

specific public-service character of the budgetary economy means many categories of the prescribed income statement become are not useful to describing the results of budget performance. Thus, their automatic application with regard to the gmina performance would result in useless information for potential investors being contained in the report. The income statement were it only to contain summary information on the gmina's revenues and expenditures, would not provide information on those revenues obtained by gminas from particular sources. But, a gmina's revenue structure is extremely important from the point of view of its financial stability and credibility. Similar results would be obtained through summary presentations of gmina expenditures, with no specification of their purposes. Therefore, it is recommended that the income statement be replaced by the budget performance report, with the latter report prepared in detail - from the basic sources of income and sections and basic paragraphs of budgetary classification with reference to expenditures.

Budget Law:

The rules of budgetary reporting for gminas were defined in the Budget Law and in the executive acts issued subsequently as authorized by the law.¹³ Furthermore, the above noted Accountancy Law changed the Budget Law, by adding Article 51a, which in Item 2 authorized the Finance Minister to define particular accountancy rules and uniform charts of accounts for gminas, gmina budgetary entities and their auxiliary units, budgetary companies and finally gmina special-purpose funds (in practice it is for the Gmina Environmental Protection Fund). Subsequent issuing executive acts under the earlier defined Ordinance has already defined uniform charts of accounts for gmina. In keeping with the standards of the Budget Law, the gminas have the duty to prepare the following financial reports:

- * quarterly consolidated report on budget performance, prepared according to the basic groups of gmina's revenues and expenditures in the form defined under the Ordinance of the Finance Minister of July 17, 1991 on preparation of quarterly reports on gmina's budget performance (Official Journal of the Finance Ministry,

The Ordinance of the Finance Minister dated January 14, 1992 concerning the principles and terms of preparing reports (Official Journal of the Finance Ministry, No. 2, item 7).

No. 11, item 52, as amended),

- * semi-annual budget reports on the Rb 28 and Rb 27 forms
- * annual balances of budgetary entities, budgetary enterprises and auxiliary firms
- * annual budget performance report on the Rb 49 forms (prepared according to the assets and liabilities accounts)

The budgetary reports are prepared in gradations of budget classification, i.e in sections - corresponding to the type of activity (eg. farming, transportation, etc.), in divisions - appropriate in view of the units having resources or the subject of expenditures (eg. elementary schools, kindergartens), and paragraphs appropriate for the type of expenditure (eg. remuneration, investments). The budget classification is applied both to the budget's expenditures and revenues. However, revenues are primarily classified according to basic sources, which match the budget classification paragraphs. One should bear in mind that the gmina council may pass the budget exclusively for the sections of classification of expenditures and for most important sources of revenue. A more detailed division of a budget passed in such a way is made by the gmina board in the budget's execution scheme. The budget reports primarily describe the plan binding on the last day of the reporting period and its execution.¹⁴ These reports contain total information collected from gmina's particular budgetary units and are related to the budgets of the non-budgetary units which are accounted for on a "net" basis, which provides the balance of subsidies from and payments to the budget. Thus, prepared reports inform about both the level of budget implementation and the structure of revenues and expenditures. Therefore, we believe that the gmina's budget performance reports should be considered a basis for the appraisal of its financial situation. It is this regular and timely reporting that contains extremely important information from the point of view of investors and which is most insightful for determining the

In practice, gmina budgets are very frequently subject to changes during the budget year. These may be introduced by the resolutions of the gmina councils, or by resolutions of the board to which the council may grant powers to introduce changes in the budget, except from making replacements among the sections of budget classification.

prospects of debt repayments. Furthermore, it is relatively simple to analyse and the one which is subject to audit on the part of the Regional Audit Office.

Local Government Law:

Irrespective of the reports prepared under the regulations of the Budget Law (and subsequently submitted, via RIOs, to the Ministry of Finance or the Chief Statistical Office) the gmina board is obligated under the local government law to prepare semi-annual reports on budget performance developments and annual reports on budget performance for the gmina council. Such reports consist of an accounts part - containing information on the state of budget performance in particular divisions of budget classification - and a verbal commentary. In the case of most gminas, such reports are lengthy and frequently of large proportions. The annual report on budget performance constitutes the basis for the vote of acceptance for the gmina board. Both the semi-annual and annual reports are submitted to the Regional Audit Offices along with the reports prepared on the Rb forms and these are the basis for the RIO opinions on the gmina's budget performance.

The usefulness of information to investors of the reports prepared under the provisions of the Budgetary Law will be limited. This is due to their voluminousness and lack of uniform standard according to which such reports could have been prepared. Nevertheless, it should be advised to include in the issue prospectus the last annual or semi-annual report on budget performance along with the RIO's opinion on such report.

In view of the above arguments, the consolidated reports on budget performance, prepared under the provisions of the Budget Law, should be acceptable as basis for gminas' financial reporting for inclusion in the issue prospectus. It is advisable to develop a sample of such a report, perhaps a somewhat more detailed one than the Rb 49 form. These reports should be supplemented by a report that shows the level of assets and liabilities in the gmina on the last day of the budget year. The balance-sheet should include the assets and liabilities of the budget entities, as well as of off-budget entities. Their financial performance could be included in "the gmina's balance-sheet" under the principles that

are appropriate for consolidation (or combining) of the assets and liabilities statements, prepared by such entities.

Finally, bearing in mind that a gmina's finances are not exhausted in the budgetary units, a gmina's reporting should be supplemented by data on the financial situation of the commercial-law companies and municipal enterprises that are gmina-dependent entities in the interpretation of the Law on Public Trading in Securities and Trust Funds. However, for reasons mentioned above, the entities do not form the capital group. Fundamental differences in the legal character precludes the possibility of simple comparison of their financial performance and the gmina's performance, as it is impossible to compare tax- and transfer-budget performance with the effects of activity of an enterprise. Taxes cannot be compared with proceeds from sales of commodities and services, like social welfare expenses cannot be compared with costs of an enterprise. Another solution is possible: assumption that gmina-dependent companies and enterprises form a capital group without the dominant entity. With this assumption, their reports can be subject to consolidation. If we exclude the dominant entity from the capital group then departure from application of Article 58, item 3, point 4) of the Law (this concerns the dividend income paid to the dominant entity) would have to be one of the consequences. In the case of gmina-issuers, the amount of gmina's revenues would frequently be so big, that application of the exclusions referred to in Article 56, item 1, point 2) would mean that large business entities would be left outside the scope of reporting. The provisions concerning complete consolidated balance sheet would have been applied for preparation of such a combined report of gmina-dependent companies. Considering the large number of gmina-dependent entities and rapid changes in their status, with pervasive transfers of state enterprises to gmina and widespread privatizations, we believe it best to prepare a combined financial report only for the last year preceding the issue.

Chapter 7

Additional Information

Justification

The Budget Law requires that gminas prepare consolidated reports on budget performance after the close of each quarter. Such reports cover revenues and budget expenditures, the effects of tax reductions and exemptions granted by gminas, and general information on the performance of the gmina budget and the methods of its financing. They primarily show the temporal continuity and smoothness of budget performance by gminas.¹⁵ Such reports are subject to initial audit by the RIOs. It may be expedient to include quarterly reports, prepared from the beginning of the year, to update the prospectus to date of offering.

Another important document for gmina's finances is the draft budget for the following fiscal year. This draft should be composed according to the Local Government Law by November 15th preceding the following budgetary year and be submitted with the gmina council by the board. The arrangement of the draft corresponds to the budget structure. If the council does not adopt the budget resolution by December 31st, the draft budget constitutes a basis for running finances by the gmina.¹⁶ The draft budget submitted to the gmina council is also sent to the Regional Audit Office, which gives an opinion on it. Both the draft budget and the RIO opinion (provided they were made) should be attached to the issue prospectus.

Chapter 8

Attachments

Justification

One should bear it in mind that only in exceptional cases the budget is smoothly performed throughout the entire year. Most often, both the revenues and the expenditures are cyclical.

The gmina budget has to be passed by April 30th of a given budget year at the latest. If not passed by then, the Regional Audit Office establishes the gmina budget to meet the scope of obligatory expenditures and tasks as determined by the state administration.

One of the tasks of the Regional Audit Offices is to give an opinion on the intent to issue bonds by a gmina. However, neither the RIO Law nor the executive acts specify on the basis of which documents such an opinion should be issued. At the same time, it should be noted that the regional audit offices, of all institutions, have the widest scope of information about gmina finances. This follows from the fact of accumulation, since mid-1993, of data on gmina activities. Such information includes:

- * quarterly, semi-annual and annual reports on budget performance;
- * draft budget along with opinions given by the RIO adjudicative board;
- * descriptive reports on budget performance, prepared for the use of the gmina council;
- * a set of all resolutions of budgetary nature which were adopted by the gmina council;
- * resolutions on budgetary issues adopted by the RIO board;
- * opinions on the annual reports on budget performance and semi-annual reports on budget performance developments;
- * opinions on gmina's intent to borrow at a bank other than the bank servicing gmina's budget;
- * material from complex, scheduled, casual audits conducted on gminas.¹⁷

Regional Audit Offices, from the standpoint of documentation and continuous contact, have good grounds for appraisal of credibility of the data contained in the issue prospectus and for evaluation of gmina's creditworthiness. In addition, the RIO is charged with the statutory obligation of giving opinions on the intent of bond issue and that the opinion should be made public. Naturally, an opinion on the intent to issue bonds should be based on documents which allow for all-round appraisal of the issuer's financial situation, while the issue prospectus is the major document.

The Regional Audit Offices, as the sole independent body, are authorized to audit gmina finances. At least once in every four years, they should make complex gmina audit and much more frequently gminas are subject to an audit which covers sections of their activity. Post-audit minutes are confidential.

The opinion given on the basis of the prospectus, submitted with the RIO before submitting it with the Polish Securities Commission, should be accessible to both the Polish Securities Commission and the investors. The attachment of this opinion to the prospectus allows this.

The Regional Audit Offices also give opinions on the annual report on budget performance and semi-annual reports on the budget performance. Before giving opinions, the RIO compares reports, comparing, among others, the budget reports prepared on the Rb forms with reports prepared according to the provisions of the Local Government Law. The opinions concerning budget performance for the previous year and for the half-year (if they have been prepared) should be included in the issue prospectus.

It is natural that the Attachments should also include other essential documents for the issue, especially the ones from which arise additional rights and duties of the bondholders. This in particular concerns the statement by enhancers on providing enhancement and the statement on instituting pledge.